I have not made reference to the fact that there is an Act of the Assembly of this state conferring the right on the Diamond Match Company, a corporation of the state of Connecticut, to hold real and personal property, and to transact its business within this state, for although the act is mentioned in the brief of the respondent's attorneys, and referred to in the argument, it is nowhere stated in the record sent up to us from the court below.

The ownership of the property and the transaction of the business of a foreign corporation is admitted by the respondent in his answer. The obligations arising from state comity are the same as those that would arise from such an act of the General Assembly, and would be so regarded by the courts of law.

For the reasons which I have stated I think that the judgment of the court below should be affirmed with costs.

HOUSTON, J., concurred in the opinion of the Chancellor, and GRUBB, J., dissented.

Judgment affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME JUDICIAL COURT OF MAINE.[2]

SUPREME COURT OF MISSOURI.[3]

COURT OF CHANCERY OF NEW JERSEY.[4]

SUPREME COURT OF RHODE ISLAND.[5]

ACTION. See *Mortgage.*

AGENT. See *Usury.*

ATTACHMENT. See *Insurance.*

BANKRUPTCY.

Property of Bankrupt not recovered by Assignee.—The fact that an assignee in bankruptcy has not recovered the property assigned or realized its money value, within the time limited by the bankrupt law, does not give the bankrupt or his creditors a right to recover the property: *Mount* v. *Manhattan Co.*, 41 N. J. Eq.

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[1] From Hon. N. L. Freeman, Reporter; to appear in 115 Ill. Rep.

[2] From J. W. Spaulding, Esq., Reporter; to appear in 78 Me. Rep.

[3] From T. K. Skinker, Esq. The cases will probably appear in 85 or 86 Mo. Rep.

[4] From Hon. John H. Stewart, Reporter; to appear in 41 N. J. Eq. Reports.

[5] From Arnold Green, Esq., Reporter; appear in 15 R. I. Reports.

CONFLICT OF LAWS. See *Husband and Wife.*

CONSTITUTIONAL LAW. See *Municipal Corporation.*

Streets—Grant of Use for Railway—Right of Public to use Tracks.—A city council, under the Illinois Incorporation Act, may grant to private individuals or to a private corporation the right to lay railroad tracks in the streets, connecting with public railway tracks previously laid, and extending to the manufacturing establishments or warehouses of those laying the tracks, but in such case the tracks so laid become, in legal contemplation, part of the railway with which they connect, and are open to the public, and subject to public control in all respects as other railway tracks: *Chicago Dock Co.* v. *Garrity*, 115 Ill.

The use of the streets of a city, whether for vehicles drawn by animals, for riding upon animals, for footmen, or for the passage of railway cars, must be for the public. No corporation or individual can acquire an exclusive right to their use, or for merely private purposes: *Id.*

Railroad tracks laid on streets of a city, connected with existing railroads, and extending to public warehouses, malt houses, or manufacturing establishments, or to public wharves and landings, are in their nature public and for the public good, and all railroad companies are required by law to permit such connections to be made with their tracks: *Id.*

Restraint of Trade—Ordinance requiring Railroads to Report.—The ordinance of St. Louis, requiring street railroads to make quarterly reports of the number of passengers carried, is not void as being unreasonable or in restraint of trade, and is not in violation of art. 5, of the Amendments of the Constitution of the United States: *City of St. Louis* v. *St. Louis Rd. Co.*, 85 or 86 Mo.

Local Legislation—Class containing One Member—Judicial Notice of Census.—Where an act provides "that in all counties in this state in which is located a city of over 50,000 inhabitants there shall be, and there is hereby established, a reform school for the punishment, reform and education of juvenile offenders as hereinafter provided," it violates those provisions contained in sect. 53, of art. 4, of the Constitution of this state in relation to the passage of local or special laws. The above law shows that it was designed to operate in the present, and on an existing state of facts, *i. e.*, "in all counties in this state in which is located a city of over 50,000 inhabitants." The court takes judicial notice of the census returns, and it is found that Jackson county is the only county in the state to which the law can be made applicable, or was intended to be applied when the act was passed. This fact is as apparent as if that county were designated by name instead of by a circumlocution: *State* v. *County Court of Jackson County*, 85 or 86 Mo.

CONTRACT.

Contracts—Bids—Building Committee.—A mere bid in answer to an advertisement for proposals for building does not constitute a contract: *Howard* v. *Maine Industrial School*, 78 Me.

A conditional acceptance, such as requiring a bond, delays the completion of the contract until the condition is complied with: *Id.*

Where one party, as a corporation, acts through a building committee,

a majority of the committee must concur in making any contract, or in varying one already made: *Id.*

Agreement to make Bequest.—One G. wrote, in 1869, to his nephew, who was then living in Germany, that if he would come to this country and take care of him and his wife, who were childless, that he would leave him all his fortune; and that otherwise he need expect nothing from him. The nephew came accordingly, and took care of his uncle and aunt for ten years, until the uncle's death. *Held,* that this constituted a contract enforceable by the nephew against the legatees and representatives of the uncle, claiming under a will of the uncle which made no provision whatever for the nephew: *Schutt* v. *Missionary Soc. of M. E. Church,* 41 N. J. Eq.

CORPORATION. See *Contract.*

Judgment before Organization—Lien of—Mortgage.—A corporation, colorably organized under the statute, transacted business and incurred debts, on which judgments were recovered. After incurring those debts the corporation perfected its legal organization, and then gave certain mortgages on its property. *Held,* that the judgments were entitled to preference in payment over the mortgages; *Bergen* v. *Porpoise Fishing Co.*, 41 N. J. Eq.

Railroad—Power to Lease other Road—Right of Dissenting Stockholders.—The statute of 1880, which provides that any railroad may lease, consolidate or merge with any other railroad, does not authorize such lease by the directors against a minority of dissenting stockholders, so far as the latter's rights are affected thereby. That provision is merely a legislative authorization, a concession on the part of the legislature of the power to do that which could not lawfully be done without such authority: *Mills* v. *Central Rd.*, 41 N. J. Eq.

The sixth section of the general corporation act which provides that the charter of every corporation thereafter granted shall be subject to alteration, suspension or repeal, in the discretion of the legislature, does not incorporate the act of 1880, *supra*, in defendants' charter so as to affect injuriously the vested rights of stockholders: *Id.*

Where there is no legislative authority for ascertaining the damage inflicted upon dissenting stockholders by the majority diverting their vested rights by an illegal lease, and for awarding them compensation therefor, the court will not assume that function, but will annul the lease and restore complainants to their position before those rights were invaded, regardless of the effect of such action upon the lessee: *Id.*

COVENANT.

Party Wall—Agreement to Pay half the Cost—Whether a Covenant running with the Land.—A. and B., the owners of adjoining lots, made a written agreement that A., in the erection of a building on his lot, might place one-half of the wall upon the lot of B., suitable for a party wall, which should continue such forever, to be kept, maintained, repaired and rebuilt at the equal joint expense of both. The agreement also provided that A. should, in the first place, build and pay for the wall, and that before B. should use the same, or any part thereof, he should pay A. the cost of one-half of the wall, and that the provisions

of the agreement should be taken as covenants running with the land, and binding upon the executors, heirs, devisees and assigns of the parties, and all persons having, at any time, any interest or estate in said lots: *Held*, that the agreement of B. to pay A. one-half of the cost of the wall was not a covenant running with the lot of A., but was personal to A., and that he, and not his assignee, was entitled to receive the sum due from B. for his part of the cost, and that the wall, when completed, became the property of each, although A. had the right to retain pos session of the whole as a security for the payment of the sum due him: *Gibson* v. *Holden*, 115 Ill.

DAMAGES. See *Injunction.*

EQUITY. See *Municipal Corporation; Receiver.*

Limit as to Amount Involved—Suits under $50.—Lord Bacon's ordinance, declaring that all suits under the value of 10*l.* shall be dismissed, is in force in New Jersey: *Allen* v. *Demarest*, 41 N. J. Eq.

In order to justify a dismissal on the ground that the matter in dispute is beneath the jurisdiction of the court, the matter in dispute must be less than $50: *Id.*

A defendant may avail himself of the objection that the matter in dispute is too trivial to justify the court in entertaining the suit, either by demurrer or by motion on notice: *Id.*

Release to Railroad for Injuries—When set aside.—Where a release to a railroad company for injuries received is brought about by fraud, or where there has been a mistake of such a character as shows that there was no aggregatio mentium, or where an unconscionable advantage has been gained by mere mistake or misapprehension, and where there is no gross negligence on the part of plaintiff, equity will interfere in its discretion, to prevent intolerable injustice: *Blair* v. *C. & A. Rd.*, 85 or 86 Mo.

When such an instrument is so general in its terms as to release the rights of a party of which he was ignorant, and which were not not in contemplation of the bargain at the time it was made, the instrument will be restrained to the purposes of the bargain, and the release confined to the rights intended to be released: *Id.*

EVIDENCE. See *Husband and Wife.*

Communications between Physician and Patient.—The rule that communications between doctor and patient are confidential and inadmissible as evidence, may be waived by the patient: *Blair* v. *C. & A. Rd.*, 81 or 82 Mo.

EXECUTOR. See *Usury.*

EXECUTION.

Writ directed to Sheriff of another County—Power of Court in county where levied.—Where a judgment is obtained in S. county, and an alias execution is issued thereon, directed to the sheriff of county B., returnable to the circuit court of the former county, and the sheriff of county B. levied the execution upon lands in that county, and advertised the same for sale, and where the defendant files a motion in the circuit court of county B., to quash the levy, the circuit court of county B. has no

jurisdiction to hear such motion, the proper forum being county S., where the judgment was obtained: *Mellier* v. *Bartlett*, 85 or 86 Mo.

Former Recovery.

Judgment in another State—Pleading.—A judgment of the Supreme Court of the City and County of New York, in favor of the plaintiff, is a bar to the further prosecution of an action in Maine, between the same parties, for the same cause, although the action was pending in Maine, when the other action was commenced in New York: *Whiting* v. *Burger*, 78 Me.

Such judgment may be pleaded specially as a bar to the further maintenance of the action here, or it may be proved under the general issue: *Id.*

Husband and Wife.

Proof of Marriage—Certificate—Evidence.—A paper found in the possession of one of the parties to an alleged marriage, or produced by such party, purporting to be a marriage certificate, is admissible in proof of marriage, in civil cases other than actions for seduction, without proof of its genuineness, or that it was given by one acting in an official capacity: *Inhabitants of Camden* v. *Inhabitants of Belgrade*, 78 Me.

In proof of a disputed marriage in civil suits (other than actions for seduction) cohabitation, reputation, the declarations of the parties—written or oral—and their conduct, and all other circumstances usually attending the marriage relation and indicative of its existence, are admissible in evidence; and where there is shown to have been cohabitation for some years, and children born to the parties, it is admissible to show what kind of a family the woman had previously belonged to and what kind of a home she had left: *Id.*

Divorce—Decrees of other State Courts.—Courts of other states have no authority to decree a divorce between citizens of this state: *Gregory* v. *Gregory*, 78 Me.

The courts of this state are not bound by the findings of courts of other states upon the jurisdictional question of residence of the parties: *Id.*

Divorce—Adultery.—If the party suing for a divorce commits adultery, pending the suit, and after answer filed, the defendant will be allowed to recriminate by supplemental answer: *Fuller* v. *Fuller*, 41 N. J. Eq.

Adultery committed at any time before the final decree is pronounced, constitutes a perfect bar to the plaintiff's action: *Id.*

Injunction.

Suit on Bond—Damages.—Under an injunction bond, with condition that the complainant shall pay such damages as the defendant shall sustain, by reason of the injunction, in case it is finally decided that the complainant was not equitably entitled to the injunction, a defendant is entitled to recover a reasonable amount of counsel fees necessarily expended in getting rid of the injunction: *Cook* v. *Chapman*, 41 N. J. Eq.

But under such a bond, a defendant is not entitled to recover compensation for the time and service he may have devoted to the case, nor to com-

pensation for the mental strain and anxiety he may have suffered in consequence of the injunction: *Id.*

INSURANCE.

Life Insurance—Lapsed Policy—Change of Beneficiary—Apportionment.—An insurance company, in 1869, issued its policy No. 4091, for one thousand dollars, upon the life of Charles J. Haley, payable to his wife, Julia A. Haley, her heirs, executors, administrators, or assigns, requiring quarterly premiums of four dollars and eighty-eight cents. During her life she paid premiums, amounting to one hundred and sixty-five dollars and ninety-two cents. Upon her death in March 1877, in order that Charles J. Haley might acquire to his own use the benefits of the policy of insurance, he and the company contrived together to allow the policy to lapse from non-payment of premiums, and the company issued to Charles J. Haley a new policy of insurance for the same amount requiring the same quarterly premiums, payable to him or his legal representatives, dated October 12th 1877, numbered 32,705. Upon the new policy, he paid in premiums the sum of seventy-eight dollars and eight cents, and died in September 1881. Policy No. 4091 was not given or assigned to Charles J. Haley, and it was a part of the consideration for policy No. 32,705: *held*, on a bill of interpleader by the company upon which the respective administrators of the estates of Julia A. Haley and Charles J. Haley were required to interplead, that the insurance money be divided between the administrators in the proportion of the amount of premiums paid by their respective intestates: *National Life Ins. Co.* v. *Haley*, 78 Me.

Life Insurance—Beneficiary—Trustee Process.—By the terms of a life insurance policy, the insurance company promised to pay the assured, his executors, administrators or assigns, for the sole use and benefit of his four children therein named, and the survivor or survivors of them, the amount expressed in the policy, after deducting therefrom any indebtedness the company might have on account of the contract, within ninety days after notice and proof of death: *held*, 1st. That the insurance, although for the sole use and benefit of the children, was payable, not to them, but by the express terms of the contract, to his own legal representative, who, upon payment of the insurance, would become a trustee under an express trust, of the money thus collected for the *cestuis que trust*; 2d. That the administrator of the assured was the only proper party who could maintain an action at law upon the contract, the policy having never been assigned, and the assured having died intestate; 3d. That the insurance company, before payment over to the administrator of the amount due upon said policy, is not liable in trustee process at the suit of a creditor of one of the children named in the policy: *Stowe* v. *Phinney*, 78 Me.

JUDGMENT. See *Mortgage.*

Court of Limited Jurisdiction.—Effect of Judgment.—When the jurisdiction over a case, of a court of limited jurisdiction, depends on some fact which can be decided without deciding the case on its merits, the jurisdiction may be questioned and disproved collaterally, although the jurisdictional fact is averred of record and has been on evidence actually found by the court: *Peoples Savings Bank* v. *Wilcox*, 15 R. I.

But when the question of jurisdiction is so involved in the subject-matter of the suit that it cannot be separately decided, the judgment rendered is conclusive in collateral proceedings: *Id.*

LUNATIC.

Guardian—Right to Carry on Business—Settlement of Account—Liability of Surety.—A guardian of an insane person may carry on the business of his ward, and the money of the ward thus invested is not a breach of trust. Distinction between cases of this nature and the administration of estates of deceased persons pointed out. It is within the power of a probate court to direct the continuance of the business of the ward, and in many cases it is the plain and obvious duty of the court to do so: *State* v. *Jones*, 85 or 86 Mo.

A reasonable compensation only should be allowed the guardian for conducting his ward's business, and the five per cent. rule should not always be adopted: *Id.*

The annual settlements and orders of approval made thereon by the probate court are competent evidence to show—and here they do show—that the business was carried on under the eye and supervision of the court, and this is sufficient, though no previous order therefor was obtained: *Id.*

Annual settlements of administrators, and of curators and guardians of minors, are not conclusive, but are subject to review and correction at final settlement; and annual settlements of a guardian of an insane person are of the same nature and are only *prima facie* evidence of their correctness: *Id.*

Sureties in a second bond given by such guardian are not liable for excessive commissions retained by or allowed to such guardian in previous annual settlements under first bond. The general rule is that sureties are not liable for past defaults unless made so by the terms of the bond: *Id.*

This rule evidently applies when the bonds are given under the same appointment or term of office, as well as where there are different bonds under successive appointments: *Id.*

MORTGAGE.

Foreclosure—Subsequent Suit—Assignment for Benefit of Creditors.—Foreclosure without sale is a satisfaction of the debt secured only to the amount of the value of the property taken in foreclosure: *Hazard* v. *Robinson*, 15 R. I.

When after foreclosure without sale the mortgagee brought suit and obtained judgment, not for a deficiency, but for the whole amount of the debt: *Held*, that obtaining the judgment was presumptively a waiver or disclaimer of the foreclosure and presumptively left the mortgage subject to redemption in equity: *Id.*

A. mortgaged certain shares of corporate stock, which although personalty, were by the charter of the corporation transferable by deed, and then by deed assigned his property for the benefit of his creditors to B. B. conveyed this property to C. by deed setting forth the same trusts as those under which B. had received it from A. C. died: *Held*, on a bill to redeem brought by the administrator of A. that the legal title to

the shares of stock passed to C. and that the personal representative of C. was a necessary party to the suit: *Id.*

Alternative Decree of Foreclosure—Suit at Law on.—On a bill to foreclose, a decree was entered ordering the respondents to pay a certain sum to the complainant within a certain time, and in default of such payment appointing a master to sell the mortgaged premises and to deposit the proceeds in the registry of the court. Subsequently an action of debt on judgment was brought by the complainant against the respondents to recover the sum mentioned in the above decree. The respondents pleaded *nul tiel record. Held*, that the action did not lie, the decree being in the alternative and on a bill to foreclose: *Burgess* v. *Souther*, 15 R. I.

Foreclosure proceedings in equity are of the nature of proceedings *in rem*, and do not ordinarily act *in personam*: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law.*

Town—Right to bring Suit—Bill in Equity by.—If a bill in chancery be brought in the name of a town without authority of the electors given at a town meeting, the court may properly dismiss the same on the motion of the defendants, and this the court may do on its own motion, when its attention is called to the fact that the suit is being prosecuted without lawful authority: *Kankakee* v. *Kankakee and Indiana Rd.*, 115 Ill.

Under the Illinois system of township organization there is no officer or board representing the corporate authority of a town. The electors alone represent it, and they can do so only through town meetings. Therefore, neither the supervisor nor the board of town auditors can lawfully authorize a suit in chancery to be brought in the corporate name of their town, or any other action except in the cases named in the statute: *Id.*

It is probable that in extreme cases of threatened invasion or destruction of the property rights of a town, any tax-payer who might thereby be affected in the burden of taxation may prevent such wrong by injunction: *Id.*

NOTICE.

Real Action—Purchaser pendente lite—H. conveyed to S. a parcel of real estate, the deed for which was not recorded. A third person, who had previously levied an execution upon the same real estate, without notice of the unrecorded deed, brought an action against H. for the possession of the estate. After that action was entered in court, S. recorded his deed: *held*, that S. could be regarded in no other light than as purchaser *pendente lite*: *Smith* v. *Hodgson*, 78 Me.

A purchaser of real estate *pendente lite*, is chargeable with notice of the character of the suit, and of the extent of the claim asserted in the pleadings, in reference to the title to such real estate, without express or implied notice in point of fact: *Id.*

As such purchaser, he is bound by any judgment that may have been entered against the party from whom he has derived his alleged title, equally as if he had been a party to such judgment from the beginning.

And the litigating parties are exempted from taking any notice of the title so acquired; nor are they obliged to make such purchaser a party to the suit: *Id.*

PARTY WALL. See *Covenant.*

RAILROAD. See *Constitutional Law; Corporation.*

RECEIVER.

Joint-Stock Companies.—The plaintiffs, four in number, and the defendants, thirteen in number, are members of an unincorporated joint-stock company; the property of the company at the commencement of the suit consisted of a building, a small amount of furniture and $82 in money, in all of the value of about $1100; the stock was divided into $10 shares, of which the plaintiffs owned twelve shares and the defendants the balance; the building was erected for the use of the Patrons of Husbandry, of which all the defendants are members and the plaintiffs had been members. *Held*, that equity does not require that a receiver should be appointed to sell the property and divide the proceeds among the members of the company: *Hinkley* v. *Btethen*, 78 Me

TAXATION.

Non-Resident Trustee.—A trustee resident in another state who holds as trustee no property in this state is not liable to taxation in the town where his *cestui* resides in this state: *Anthony* v. *Caswell*, 15 R. I.

USURY.

Loan by Executor—Receipt of Bonus from Borrower.—An agent for loaning money may take a reasonable commission from the borrower, even with the knowledge of the lender, and still the transaction will not be usurious, though the amount of the interest reserved to the lender be the full lawful interest: *Landis* v. *Saxton*, 85 or 86 Mo.

An executor is a trustee and cannot speculate with the trust property, or make gains therefrom individually beyond his allowed legal compensation, and it is against public policy to allow him to make commissions over and above that allowed by law by speculating or loaning the trust fund, hence a contract by such trustee for a bonus from a borrower of money of the trust estate is illegal. He cannot hold the money thus illegally made by the use of the trust property, or by the use of his position as trustee. No court will enforce the performance of an illegal contract: *Id.*

WILL. See *Contract.*

Devise—Fee Simple Estate.—Realty was devised to a trustee in fee to pay over the income to certain named *cestuis*, no time being limited during which payment was to continue. Provision was made by the will as to one of the *cestuis* that in case of his insolvency or of an attachment of his equitable estate his right to income should terminate and his share be paid by the trustee to A., B. and C.. their heirs and assigns, also that the trustee might, in certain contingencies, pay over to the *cestui* his whole interest in the trust property "in fee simple for his own use" free from all trusts. *Held*, that the *cestui que trustent* took each an equitable estate in fee simple: *Greene* v. *Wilbur*, 15 R. I.